Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

In Re: JERRY JACKSON STAMPS
and
In Re: TERESA LYNN WITT-STAMPS

Petitioners,

Petition for a Writ of Certiorari to the
Supreme Court of Louisiana

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Is a licensed attorney charged with an ethical violation, entitled to the same constitutional rights as every American citizen involved in litigation. The Louisiana Supreme Court apparently answers this question ***no***.

The Supreme Court of Louisiana held in Petitioners' case and in the case of *In re Quaid,* 94-1316 (La. 11/30/94) 646 So.2d 343, 348 n.2, that "it may well be more appropriate in disciplinary proceedings to be guided but not confined by strict application of the Code of Evidence." In other words, everything is considered, including the evidence of a consent decree from the bar of another state, involving a disbarred attorney, who is not called as a witness, nor deposed for the specific proceeding in Louisiana, which Petitioners contend makes any evidence, including the decree itself, checks or trust account records, clearly hearsay and sometimes compounded hearsay, insufficient to support the charge and a violation of the confrontation clause of the Sixth Amendment made applicable by the Fourteenth Amendment.

Petitioners suggest that such an approach erodes the application of the "clear and convincing" evidence standard and consequently deprives Petitioners of their Fourteenth Amendment due process and equal protection rights both under state and federal law. The clear evidence standard and the confrontation clause would not mean anything if the court were allowed to disregard all applications of the Code of Evidence and the rules against hearsay in its entirety. Even in a civil trial where the standard is a preponderance of the evidence the rules of evidence are applied. Making inferences from evidence of a hearsay nature admitted over objections in order to find the evidence necessary to

discipline an attorney is not appropriate and violates the Fourteenth Amendment.

The questions presented therefore are:

I. Whether the practice and procedure of the Louisiana Supreme Court, announced in *In re Quaid,* 646 So.2d 343 (La. 1994) and followed in Petitioners' case violates the Fourteenth Amendment to the Constitution of the United States.

II. Whether the Louisiana Supreme Court erred and violated Petitioners' Fourteenth Amendment rights in its determination that it had jurisdiction over Petitioners regarding acts Louisiana believes were performed by Petitioners in North Carolina prior to Petitioners being licensed in Louisiana and, consequently jurisdiction to determine whether those acts amounted to the unauthorized practice of law.

III. Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires more than notice and opportunity to be heard where fundamental rights are involved. See *Greene v. McElroy,* 360 U.S. 474 (1959).

IV. Whether it was a violation of the Fourteenth Amendment's Procedural Due Process Clause to deny Petitioners' Motion to Sever and thus hear all the evidence in a single hearing.

V. Whether it was a violation of the Fourteenth Amendment not to consider factors in mitigation,

but to consider as aggravating factor, the fact that Petitioners chose to defend themselves.

VI. Whether it was a violation of due process and a failure of equal protection for Louisiana Supreme Court to disbar Petitioners for failing to disclose a material fact on their bar applications when there had never been an independent determination of wrongdoing which applicants were made aware of before Louisiana *ex-post facto* determined those actions should have been disclosed and then sanctioned them with disbarment for that non-disclosure concurrently with the finding of the Court.

VII. Whether it was a violation of due process for the Louisiana Supreme Court to make part of its Order, checks which had never been introduced into evidence in the disciplinary proceedings against Petitioners.

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PETITION FOR WRIT OF CERTIORARI

Jerry Jackson Stamps and Teresa Lynn Witt-Stamps, the Petitioners, respectfully pray that a writ of certiorari iss`ue to review the opinion and order of the Louisiana Supreme Court, entered this case on April 14, 2004 and June 25, 2004 respectively.

OPINIONS BELOW

The opinion of the Louisiana Supreme Court (Appendix A), which is sought to be reviewed, is reported at 874 So.2d 113, 2003-2985 (La. 4/14/04). The order of the Louisiana Supreme Court denying the petition for rehearing (Appendix B), is unreported. The recommendation of the Louisiana Attorney Disciplinary Board is attached hereto as Appendix C. The recommendation of the Louisiana Disciplinary Hearing Committee is attached hereto as Appendix D.

STATEMENT OF JURISDICTION

The judgment of the Louisiana Supreme Court (Appendix A) was entered on April 4, 2004. A timely petition for rehearing was denied on June 25, 2004 (Appendix B). The jurisdiction of the Supreme Court is invoked under 28 U.S.C.A. § 1257. The petition for certiorari involves an appeal of a final judgment or decree rendered by the highest court of a State in which a decision could be had, and the validity of a statute of the State is drawn in question on the ground of its being repugnant to the Constitution and laws of the United States, and involves rights and privileges claimed under the Constitution of the United States.

RELEVANT PROVISIONS INVOLVED

Louisiana Supreme Court Rule XIX, § 18(B) provides that:

> **Proceedings Governed by the Code of Civil Procedure and the Code of Evidence.** Except as otherwise provided in these rules, the Louisiana Code of Civil Procedure and the Louisiana Code of Evidence apply in discipline and disability cases.

Louisiana Supreme Court Rule XIX § 18(C) provides that:

> **Standard of Proof.** Formal charges of misconduct, petitions for reinstatement and readmission, and petition for transfer to and from disability inactive status shall be established by clear and convincing evidence.

Louisiana Supreme Court Rule XIX § 18(D) (provides that):

> **Burden of Proof.** The burden of proof in proceedings seeking discipline or transfer to disability inactive status is on disciplinary counsel. The burden of proof in proceedings seeking reinstatement, readmission, or transfer from disability inactive status is on the respondent.

Rule 8.1 of the Rules of Professional Conduct provides, in pertinent part:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact. . .

STATEMENT

(i) Nature of the Case

This is a petition for review of the decisions of the Louisiana Disciplinary Hearing Committee ("Hearing Committee"), the Louisiana Attorney Disciplinary Board ("Board") and the Louisiana Supreme Court ("Court") disbarring both Petitioners for violating Rule 8.1 by failing to list on their bar applications.

(ii) Proceedings before Hearing Committee

On April 16, 2001, the Louisiana Office of Disciplinary Counsel ("ODC") filed a one count Formal Charge against both Petitioners. The Formal Charge alleged that the Petitioners engaged in the unauthorized practice of law in North Carolina ***prior to their admission to any Bar in violation of the Rules of Professional Conduct 5.5(a)*** (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction) and 5.5(b) (assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law). The charge also alleged that Petitioners omitted significant and relevant information from their applications to take the Louisiana bar examination in violation of the Rules of Professional Conduct 8.1(a) knowingly making a false statement of material fact in a bar

admission application); 8.1(b) (failing to disclose a fact necessary to correct a misapprehension in a bar admission matter); 8.4(a) (violating the Rules of Professional Conduct); 8.4(c) (engaging in conduct that is prejudicial to the administration of justice).

On May 7, 2001, the Petitioners filed separate responses to the formal charges. On June 15, 2001, Petitioners urged lack of jurisdiction, lack of personal jurisdiction and no cause of action by peremptory exception. On June 22, 2001, ODC filed its opposition to the peremptory exceptions. On July 2, 2001, Petitioners filed a reply opposition. On July 16, 2001, Petitioners filed a motion for expedited hearing of the exceptions. David Rubin, the Hearing Committee Chairperson, (standing in for the original Chairperson) deferred his ruling on the exceptions to the hearing.

On September 10, 2001, the Petitioners/Respondents filed a motion to sever the case as to each Petitioner. On September 11, 2001, ODC filed its opposition to Petitioners' motion. The motion to sever was denied. On September 17, and 18, 2001, ODC and Petitioners/Respondents filed their pre-hearing memorandums.

On September 25, 2001, the hearing in this matter was held before Hearing Committee No. 26 as referenced above. At the hearing, Rubin, denied all exceptions, without prejudice. At the hearing, which contained NO live testimony whatsoever and was comprised of ODC submitting its case by deposition, none of the depositions were read into the record and none of the objections, entered by counsel, were allowed to be made part of the Hearing Record because the Chair had to leave by noon. Thus all documentary evidence was to be considered at a later date.

On October 18, 2001, Petitioners filed a post-hearing memorandum. On October 22, 2001, ODC filed a rebuttal post-hearing memorandum. On October 29, 2001, Petitioners filed a reply to ODC's memorandum.

On July 10, 2002, over nine months later, the Hearing Committee issued its Findings and Recommendations, wherein they found that both Petitioners had violated the Louisiana Rules of Professional Conduct, Rules 8.1(a), 8.1(b), 8.4(a), 8.4(c) and 8.4(d). As to Ms. Stamps, that she had violated the Louisiana Rules of Professional Conduct, Rule 5.5 relative to the unauthorized practice of law. The Hearing Committee recommended that Petitioners be disbarred from the practice of law.

(iii) Proceedings before the Disciplinary Board

On August 15, 2002, the ODC filed a response to the Hearing Committee's report agreeing with the Hearing Committee. On September 27, 2002, Petitioners' filed an objection to the Hearing Committee's report with the Board. On October 2, 2002, ODC filed a reply to Petitioners'/Respondents' objection.

On October 24, 2002, oral argument was held before Panel C of the Louisiana Attorney Disciplinary Board (the "Board"). On October 27, 2003, one year later, the Board filed its Recommendation to the Louisiana Supreme Court (Appendix C). In the Board Recommendations, the Board found that each Petitioner had violated the following Rules of Professional Conduct: Rule 8.1(a), 8.1(b), 8.4(a), 8.4(d) and 5.5 and recommended that each Petitioner be suspended from the practice of law for two (2) years.

(iv) Proceedings in the Louisiana Supreme Court

On November 18, 2003, Petitioners filed their Objection to Disciplinary Board Report with the Louisiana Supreme Court. On or about November 20, 2003, ODC filed ODC's Objection to Disciplinary Report.

On April 14, 2004 the Louisiana Supreme Court disbarred both Petitioners in violation of their Fourteenth Amendment rights to the Constitution of the United States, as pointed out in *Greene v. McElroy, et al,* 360 U.S. 474 (1959). Petitioners filed a Petition for Rehearing on April 28, 2004, which was denied on June 25, 2004. Chief Justice P. Calagero voted to grant the rehearing.

(v) Statement of Louisiana Supreme Court and United States Supreme Court Jurisdiction

Jurisdiction and venue were in the Louisiana Supreme Court pursuant to Louisiana Supreme Court, Rule XIX, Section 2(G)(2)(a)

Jurisdiction of this Court on application for writ of certiorari is invoked under 28 U.S.C.A. § 1257 as set forth above. That is, the petition for certiorari involves an appeal of a final judgment or decree rendered by the highest court of a State in which a decision could be had, and the validity of a statute of the State is drawn in question on the ground of its being repugnant to the Constitution and laws of the United States, and involves rights and privileges claimed under the Constitution of the United States. More specifically, this appeal involves whether the process and procedures now utilized by the Louisiana Supreme Court in dealing with bar disciplinary matters violate the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

(vi) Brief factual background

Teresa Lynn Witt-Stamps and Jerry Jackson Stamps graduated from law school in May, 1998. Thereafter they applied to take the Louisiana Bar examination in the summer of 1998. During the relevant time period Teresa Lynn Witt-Stamps conditioned the first examination. She reapplied and passed the second examination. She was sworn in to practice in April, 1999. During the same period Jerry Jackson Stamps failed the examination on his first effort, filed a second application and in February, 1999 he conditioned the bar examination. He reapplied a third time and passed the bar examination in July, 1999.

In the late 1998 timeframe while waiting for the bar results Respondents were looking for employment. They responded to a computer ad by Gabrielee Locklear, a North Carolina attorney. They visited Locklear on several occasions and ultimately signed an employment contract to work for him effective January 2, 1999, assuming that they were able to pass the bar examination. The employment did not come to fruition and although Respondents were in North Carolina and in the law offices of Mr. Locklear from time to time they never began working for him pursuant to the contract.

It is alleged that Respondents' applications for admission to the Louisiana State Bar were materially false and misleading because they did not list employment with Locklear. The applications of Teresa Lynn Witt-Stamps dated May, 1998 and December, 1998 are true, correct and contain no material misrepresentations. The 1998 applications of Jerry Jackson Stamps are true, correct and contain no material misstatements. Moreover, the 1999 application is similarly true and correct for the reason that Jerry Jackson Stamps, on the merits, shows that there is no

clear and convincing evidence of his employment by Locklear.

The case of the Office of Disciplinary Counsel hinges upon the question of whether or not Answer 13 on the applications were materially false.

REASONS FOR GRANTING THE WRIT

I. This case presents fundamental and substantial questions of constitutional law for review. The practice and procedure of the Louisiana Supreme Court, announced in *In re Quaid*, 646 So.2d 343 (La. 1994), and followed in Petitioners' case, violates the Fourteenth Amendment to the Constitution of the United States.

The Court, applying a relaxed standard in the application and implementation of the Rules of Civil Procedure and the Rules of Evidence disbarred these Petitioners based entirely on unreliable and untrustworthy hearsay evidence because they failed to mention on their bar application[s] an employment relationship with a North Carolina attorney. This alleged employment took place wholly (if it took place at all) in the State of North Carolina and PRIOR to either Petitioner being licensed to practice law in any state.

Petitioners denied that as of the date of their bar applications was anything to report about their acquaintance with the North Carolina attorney, Gabrielee Locklear. The State of North Carolina did not charge either Petitioner with the unauthorized practice of law, nor did the North Carolina Bar make allegations concerning the unauthorized practice of law in the State of North Carolina. All allegations came from the Office of Disciplinary Counsel of the Louisiana

Attorney Disciplinary Board concerning activities in North Carolina prior to Petitioners becoming licensed attorneys even though the State of North Carolina took no action against these Petitioners.

The proceedings of the Court violated Petitioners' Fourteenth Amendment rights and this case presents fundamental and substantial questions of constitutional law for review. The practice and procedure of the Court, announced in *In re Quaid*, 646 So.2d 343 (La. 1994) and followed in Petitioners' case, violates the Fourteenth Amendment to the Constitution of the United States.

The Court, in *Quaid,* held that:

> The purpose of rules of evidence primarily intended to govern jury trials, particularly the hearsay rules, are less compelling in the context of imposing discipline on members of the legal profession. This Court retains power to determine the ultimate question of admissibility under its original jurisdiction as the triers of fact in disciplinary proceedings, and it may well be more appropriate in disciplinary proceedings to be guided but not confined by strict application of the Code of Evidence. *See In re Huddleston*, 595 So.2d 1141, 1148 (La. 1992) (concurring opinion). *Quaid* at 348, n.2.

The Court's decision in Petitioners' case held that:

> Respondents [Petitioners] argue the hearing committee erred in

considering various evidence which they contend are subject to hearsay objections. Specifically, respondents object to certain unauthenticated records, as well as evidence and the findings of fact in Mr. Locklear's disciplinary case. *In re Stamps*, 01-DB-039, at p. 16.

. . . In general, disciplinary proceedings are subject to the provisions of the Code of Evidence, Supreme Court Rule XIX, § 18(B). **However, in *In re Quaid*, 94-1316 at p. 8, n. 2 (La. 11/30/94), 646 So.2d 343, 348, we observed that the unique position of this court as trier of fact in disciplinary proceedings lessened the need for strict application of those provisions of the Code of Evidence such as hearsay, which were primarily intended to govern jury trials:**

> **Unlike a lay jury, this court, in its role as trier of fact in disciplinary cases, has the ability to consider the entire record and evaluate and weigh the probative value of evidence based on the totality of the circumstances.**
>
> **Considering the record as a whole, we find the hearing committee did not**

> **err in admitting the disputed evidence.** (emphasis ours) *In re Stamps* at pp. 16-17.

The Court's decision in *In re Quaid,* 646 So.2d 343 (La. 1994) is in conflict with the Court's Rule XIX, Section 18(B) of the Louisiana Rules of Professional Conduct and the Fourteenth Amendment to the Constitution of the United States. Moreover, relaxation of the hearsay rule conflicts with and lessens the standard of proof. The clear and convincing standard cannot be satisfied or met by hearsay evidence. Vagueness in the standard of proof to be applied is a denial of due process and a failure of equal protection of the laws under state and federal constitutions alike.

While the Court, in this case, properly identifies the clear and convincing standard of proof, its consideration of hearsay and other objectionable evidence lessens that standard. The record in this case does not contain clear, convincing evidence that either Jerry Jackson Stamps or Teresa Lynn Witt-Stamps practiced law in North Carolina to the end that their respective applications are false. The failure to require that objectionable evidence, timely opposed, be excluded is a denial of due process and a failure of equal protection of the law.

The procedures and rulings of the Hearing Committee violated the procedural constitutional rights of the parties to confront and cross-examine the witnesses against them, U. S. Const. Amend. VI. La. Const. 1974 Art. 1. 16. and the statutory prohibition against hearsay evidence, except as provided by law, La. Code of Evidence, Article 801, et seq., see *Crawford v. Washington*, 124 S. Ct. 1354 (2004).

The Hearing Committee allowed hearsay to be admitted into evidence without making a ruling on any of the numerous objections made by Petitioners. Hearsay evidence was considered against both Petitioners, which was not at all relevant to both of them. By admitting so much unreliable and untrustworthy hearsay evidence indiscriminately against both parties, which was irrelevant and had nothing whatsoever to do with one of the parties, the entire hearing was tainted and violated procedural due process.

In the recent decision of the United States Supreme Court in *Crawford v. Washington*, 124 S. Ct. 1354, 1370 (2004), Justice Scalia explained that the Court does not believe that:

> The Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of "reliability." Certainly none of the authorities discussed above acknowledges any general reliability exception to the common-law rule. Admitting statements deemed reliable by a judge is fundamentally at odds with the rights of confrontation. . . the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined. Cf. 3 Blackstone, Commentaries, at 373 ("This open examination of witnesses . . . is much more conducive to the clearing up

of truth"); M. Hale, History and Analysis of the Common Law of England 258 (1713) (adversarial testing "beats and bolts out the Truth much better").

In stark contrast, the Court stated in its opinion disbarring Petitioners that: "[u]nlike a lay jury, this court, in its role as trier of fact in disciplinary cases, has the ability to consider the entire record and evaluate and weigh the probative value of evidence based on the totality of the circumstances. Considering the record as a whole, we find the hearing committee did not err in admitting the disputed evidence." *In re Stamps*, at p. 17.

Justice Scalia further explained that: "[d]ispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes." *Id.* at 1371.

In *Crawford,* the United States Supreme Court made a very substantial change in the jurisprudence involving the Sixth Amendment right to confrontation, by overruling *Ohio v. Roberts*, 100 S. Ct. 2531 (1980). Seven Justices joined in the majority opinion, Chief Justice Rehnquist and Justice O'Connor concurring, in which the court held that out-of-court statements by witnesses are barred under the Confrontation Clause, ***unless*** the witness is unavailable and the defendant had a prior opportunity to cross-examine witnesses, regardless of whether such statements are deemed reliable.

As pointed out in a recent article in the *Louisiana Bar Journal*, Volume 52, number 1, June/July 2004, the *Crawford* decision also has very significant implications for non-criminal proceedings. For example:

> "*Folse v. Folse,* 98-1976 (La. 6/29/99), 738 So.2d 1040, addressed whether the relaxed evidentiary standard applicable to child custody proceedings (La. C.E. 1101) applied in an action under the Post-Separation Family Violence Relief Act (La. R. S. 9:361 *et seq.).* The Louisiana Supreme Court, relying on *Ohio v. Roberts* and La. C.E. 804(B) (5), ruled that the statements of the minor child in accusing the parent of abuse were admissible. With the overruling of *Roberts* and the implicit conflict of the new rule with La. C.E. 804(B)(5), the validity of the *Folse* decision is called into question." LBJ at p. 39.

Clearly where fundamental rights are involved, as in attorney disciplinary proceedings, *Crawford* should apply. **This Court has made clear that "disbarment proceedings are of a quasi-criminal nature; the charge must be known before the proceedings commence and they become a trap when**, after they are underway, charges are amended on basis of testimony of accused who can then be given no opportunity to expunge earlier statements and start afresh." *In the Matter of John Ruffalo, Jr.*, 390 U.S. 544, 88 S. Ct. 1222 (1968). Justice Douglas explained that an attorney is entitled to procedural due process in disbarment proceedings, which includes fair notice of the charge. *Id.*, at 550.

***A. Unreliable and untrustworthy hearsay evidence considered by the Committee over objections of Defense Counsel*:**

(1) Trust Account Records and Checks of Disbarred Attorney, Gabrielee Locklear

These documents were clearly unreliable and untrustworthy hearsay and should not have been admitted

against these Petitioners. The Locklear disciplinary record from North Carolina reflects that the trust account records of Locklear were in shambles and had to be reconstructed after the fact by the North Carolina Disciplinary Board. In *State v. Russell*, 444 So.2d 271 (1983), reconstructed records were not admissible as an exception to the hearsay rule. Petitioners objected to these records being admitted into evidence because the source of the information contained in those records was unreliable and untrustworthy. In addition, the source of this information (i.e., Locklear) was not shown to be unavailable to testify. He should have been called as a witness, or the documents excluded from the evidence. Admission of this evidence over objection violates the confrontation clause of the Sixth Amendment.

The Louisiana Supreme Court utilized these checks in its opinion, and even listed each check as evidence of fee splitting. At no time were the checks ever offered into evidence in these proceedings. The checks were clearly inadmissible evidence against these Petitioners and should not have been part of the record considered. No evidence was introduced to prove that the checks were authentic against these Petitioners. The checks were apparently part of Locklear's disbarment proceeding in North Carolina and Petitioners were not parties in that proceeding and had no opportunity to cross-examine witnesses concerning the checks. The clients identified on the checks were not called to give evidence concerning who handled their respective cases. The author of the checks was not called to give evidence concerning the checks nor was it shown that neither the author of the checks nor the client listed on the checks were unavailable to testify. Before these checks were allowed into evidence both the author AND the client should have been called and been subjected to cross examination, or the checks should not have been admitted. The admission of these checks was reversible error and a violation of the Fourteenth Amendment. It was never shown that payees

received these checks or that they worked on the files of the client shown on the checks. Nor was it shown that the individuals were unavailable to testify. Petitioners were never afforded an opportunity to confront and cross-examine the persons whose name appears on the checks.

(2) Harleyville Insurance Documents

These documents were unreliable and untrustworthy hearsay and they were not authenticated. The Harleyville papers were in storage and apparently originated from an office in North Carolina that had been closed. No one from the closed office was called to testify how the documents were prepared or sent to the main office in Nashville, Tennessee for storage. The only person called to testify, via deposition, concerning these documents was Brenda Williams. She happened to answer the phone and retrieve the documents from the storage container. Brenda Williams was not the regular records custodian for these papers or any other records at the insurance company. She knew absolutely nothing about the handling of these documents or the parties involved. Her testimony was that she did not know the Petitioners and had never spoken to either of them at any time whatsoever. Moreover, the documents were not tendered into evidence during the deposition of Ms. Williams, nor were they authenticated during the deposition. Yet, this hearsay testimony, and this unreliable and untrustworthy hearsay documentation was not only considered by the Committee and Board, but was used as evidence to support the opinion of the Louisiana Supreme Court. Clearly, Petitioners procedural due process rights were violated with the admission and consideration of this unauthenticated and unreliable and untrustworthy evidence.

(3) Findings of Fact in the Gabrielee Locklear Disbarment Case

As to these Petitioners, the North Carolina case against Locklear was clearly hearsay evidence in this matter and should not have been allowed into evidence. Gabrielee Locklear, the respondent in the matter before the North Carolina Board, did not testify concerning any evidence used in his proceeding. He walked out prior to any decision without signing a consent judgment in the case. All persons mentioned in his North Carolina disciplinary case should have been called to testify concerning the facts alleged against the Petitioners. Petitioners should have been afforded the opportunity to confront and cross-examine the witnesses in Court if ODC wanted to use such evidence against Petitioners.

All allegations before the Hearing Committee, the Board, and the Supreme Court of Louisiana were denied by Jerry Jackson Stamps and Teresa Lynn Witt-Stamps. No clear and convincing evidence has been produced, only these unreliable and untrustworthy documents and depositions. Admitting these documents for the purposes that they were admitted i.e., to prove the truth of the matter asserted, constitutes hearsay against these Petitioners and violates the due process clause. The parties related to these documents were available to testify and they should have been called to testify, or the documents should have been excluded.

Section 18(C) of the Rules for Lawyer Disciplinary Enforcement (Rule XIX of the Louisiana Supreme Court), provides as follows:

> Standard of proof. Formal charges of misconduct, petition for reinstatement and readmission, and petitions for transfer to and from disability inactive status shall be established by clear and convincing evidence.

Section 18(D) provides that "[t]he burden of proof in proceedings seeking discipline . . . is on disciplinary counsel." Petitioners urged that the valid evidence in the record of this matter did not reach such standard. The clear and convincing standard was generally required in civil cases where the wisdom of experience demonstrated the need for greater certainty.[1]

These cases indicate that when fundamental rights are involved and the legal and social ramifications of the civil proceedings are serious, the clear and convincing standard may be applicable.[2] An ethics proceeding is just such an instance where a lawyer's privilege to earn a living and to represent clients who have chosen his services is at stake. It was entirely appropriate, therefore, that the Court adopt the clear and convincing standard of proof in ethics matters. It has been said that the standard is appropriate where interests at stake are more substantial than money.[3]

So, just what does the clear and convincing standard require of the party charged with the burden of proof? It has been held that the fact finder must have an abiding conviction that the truth of the factual contentions is highly probable.[4] Or, the fact finder must have a firm belief or conviction as to the matter sought to be proved.[5] It has been held that clear and convincing evidence is such that leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition.[6]

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1 *Chatelain v. State, Department of Transportation and Development*, 586 So.2d 1373, (La. 1991).

2 *Bolden v. Rodgers*, 746 So.3d 88 (La. App. 5th Cir. 1999).

3 *State, ex rel. J. W.*, 801 So. 2d 1182 (La. App. 4th Cir. 2001).

4 *Succession of Young*, 692 So.2d 1149 (La. App. 3rd Cir. 1997); *Succession of Cole*, 618 So.2d 554 (La. App. 4th Cir. 1993): *LSBA v. Edwins* 329 So.2d 437 (La 1976).

5 *LSBA v. Edwins*, supra.

6 *LSBA v. Edwins*, supra; *Chatelain v. DOTD*, supra.

And what does not satisfy the standard? Clearly suspicion and speculation do not rise to the level of clear and convincing evidence.[7] In fairness, the trier of fact is still entitled to resolve a conflict in the evidence but where the evidence appears evenly balanced a mere resolution of he conflict by selecting one version over another should never rise to satisfy the "clear and convincing" standard.

The Court during oral argument, questioned counsel as to whether or not it would be appropriate to infer certain facts were clearly proven from circumstantial evidence, some of which Respondents believe is clearly hearsay. We replied that it would not be appropriate to infer facts from circumstantial evidence or hearsay evidence in this case. If the clear and convincing standard of proof means anything, it is imperative for the trier of fact to apply that standard, especially to circumstantial and hearsay evidence. The evidence of a consent decree from the North Carolina Bar, involving an attorney who is not called as a witness nor deposed for this proceeding, makes any evidence, including the decree itself, checks or trust account records produced in that proceeding, hearsay and insufficient to support the charges against these Petitioners.

The admission of this hearsay evidence has totally prejudiced the disciplinary proceedings and constitutes a violation of the Sixth Amendment, which is evident from the decision rendered by the Louisiana Supreme Court on April 14, 2004 and is diametrically opposed to the recent decision of the Supreme Court in *Crawford v. Washington*, 124 S. Ct. 1354 (2004).

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[7] *Bishop v. U.S.*, 266 F. 2d 657 (5th Cir. 1959), *National Labor Relations Board v. Thompson*, 651 F.2d 1141 (5th Cir. 1981); *Poirrer v. Collection of Revenue*, 417 So.2d 410 (La. App. 1st Cir. 1982); *State ex rel, Hair* (La. App. 3rd Cir. 2000).

II. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires more than notice and opportunity to be heard where fundamental rights such as the right to practice law are involved.

Chief Justice Warren of the United States Supreme Court held in *Greene v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400 (1959) that:

> The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the "liberty" and "property" concepts of the provision of the Fifth Amendment to Federal Constitution that no person shall be denied liberty or property without due process of law.
>
> and
>
> Right of confrontation and cross-examination apply not only in criminal cases but also in all types of cases where administrative and regulatory actions are under scrutiny. *Id.*

As in *Greene*, Petitioners' rights have been severely compromised and violated on the basis of a fact determination rendered after a hearing which failed to comport with traditional ideas of fair procedure.

The hearing in this case before two lawyers and a lay person lasted a total of one hour and seventeen minutes (1 hour, 17 minutes) with no live testimony whatsoever, with no right of confrontation or cross-examination at trial. The

hearing in this case took place in Louisiana. All alleged misconduct occurred, if at all, in North Carolina prior to the Petitioners being licensed attorneys. All of the evidence and the potential witnesses were in North Carolina.

Petitioners argue that the procedure of offering deposition testimony of the out of state witnesses, which was not read into the record, and did not afford Petitioners an opportunity to object to portions of the testimony at the hearing BEFORE it was admitted into evidence and considered by the Hearing Committee, did not satisfy the right of confrontation contained in the Sixth Amendment and as amplified in the cases of *Davis v. Alaska*, 415 U.S. 308, 39 L.Ed. 2d 347, 94 S. Ct. 1105; *Smith v. Illinois*, 390 U.S. 129, 19 L.Ed 2d 956, 88 S. Ct. 748; *Brookhart v. Janis*, 384 U.S. 1, 16 L.Ed. 2d 314, 86 S. Ct. 1245; *United States v. Harris* (CA9Cal) 501 F.2d 1, *Stoner v. Sowders*, 997 F.2d 207 (7th Cir. 1993); and *Commonwealth v. McCloud*, 457 Pa. 310, 322 A.2d 653.

These decisions make it clear that circumstances where testimony is taken and offered to a Court which offer no means by which the Court can exercise control over the examination of the witnesses or interrupt the questioning to rule on objections made by the defendant violate "confrontation rights." The Courts have indicated that the prejudice resulting from a denial of an opportunity to place the witness in his proper setting on the witness stand and put the weight of his testimony and his credibility to a test stems from the confrontation clause and is not satisfied by deposition. *Alford v. United States*, 202 U.S. 687, 75 L.Ed 624, 51 S. Ct. 218. Moreover, the Office of Disciplinary Counsel did not satisfy that the deponents were unavailable.

Petitioners argue that they were not afforded the right to confront or cross-examine these witnesses within a proper setting which was a violation of their Sixth Amendment right

of confrontation. Moreover, Petitioners objected to unauthenticated records as well as evidence and findings of fact in Locklear's disciplinary case. There was no showing made by the Office of Disciplinary Counsel that Mr. Locklear was unavailable to testify. Inadmissible hearsay certainly affected the outcome of this case.

III. The Louisiana Supreme Court did not have jurisdiction to make a determination that Petitioners' actions, committed wholly in North Carolina prior to Petitioners being licensed to practice law in any state, constituted the unauthorized practice of law under North Carolina law.

Clearly, the Louisiana Supreme Court erred and violated the Fourteenth Amendment rights of Petitioners by assuming jurisdiction and failing to set forth whose law was being applied in making its determination that acts performed by Petitioners in North Carolina constituted the unauthorized practice of law and therefore rendered Petitioners' answers to question 13 on the admission application concerning alleged employment with a North Carolina attorney material.

As pointed out to the court earlier, in the event it is determined that the Louisiana Supreme Court has jurisdiction over the Petitioners regarding acts performed by Petitioners in North Carolina prior to Petitioners being licensed in Louisiana and consequently, jurisdiction to determine whether those acts amounted to the unauthorized practice of law, Petitioners submit that the "work" or acts performed were performed pursuant to and in accordance with the rules of the law of the Supreme Court of North Carolina as acknowledged and agreed to by the Petitioners and Mr. Locklear. In *Wells Fargo Bank, Minnesota, N.A. v. New Orleanian Limited Partnership*, 2202-2228 855 So. 2d

388 (La. App. 4 Cir. 8/27/93), the Louisiana Fourth Circuit reviewed a servicing agreement between a loan servicing company and an obligee. As noted by the court the servicing agreement "appears to identify Lennar as the "Special Servicer" whose obligations are to 'service and administer the Mortgage Loans. . . **in accordance with any and all applicable laws and the terms of this Agreement. . .**' Indeed the court concluded that "[t]his provision does not authorize or obligate Lennar to perform legal services. To the contrary, it requires Lennar to perform its duties **in accordance with the laws that apply.**" Like the service contract in *Wells Fargo Bank, Minnesota,* the employment contract executed by Petitioners and Gabrielee Locklear provided that the employees' duties consisting of the general practice of law would be performed "CONSISTENT WITH THE RULES OF LAW OF THE SUPREME COURT OF NORTH CAROLINA.." Accordingly, all parties understood until such time as Teresa Lynn Witt-Stamps and Jerry Jackson Stamps were qualified in North Carolina under the rules of its Supreme Court to practice law in that state, they would not engage in the practice of law. The work performed by Teresa Lynn Witt-Stamps and Jerry Jackson Stamps, if any, was to be consistent with the rules of the law of the Supreme Court of North Carolina.

Also, the Hearing Committee, at least as to Mrs. Stamps, and the Board determined that Petitioners violated Rule 5.5(a) (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction) that is to say that the Petitioners engaged in the unauthorized practice of law in North Carolina and thus violated the law in North Carolina and consequently, violated the Louisiana Rules of Professional Conduct, Rule 5.5(a).

The practice of law is defined in North Carolina and in Louisiana. However, if the Louisiana Supreme Court is

going to go so far as to invoke jurisdiction over these individuals regarding their actions in North Carolina prior to their being licensed to practice law in the State of Louisiana and make a determination as to whether those actions amounted to the unauthorized practice of law, then this question surfaces: Is the Court going to apply the rules and laws of North Carolina? According to North Carolina Bar Ethics Opinion, RPC 70, dated October 20, 1989, a legal assistant may communicate and negotiate with a claims adjuster if directly supervised by the attorney for whom he or she works. In *Hearing Commission of the North Carolina Bar v. Frazier,* 556 S.E. 2d 262 (N.C. 2001), the Supreme Court of North Carolina held that the Disciplinary Hearing Commission of the North Carolina State Bar did not have jurisdiction to discipline a disbarred attorney for the unauthorized or unlawful practice of law or to find him in criminal conduct for doing so.

It was submitted by Petitioners that Locklear supervised all work performed by Teresa Lynn Witt-Stamps and Jerry Jackson Stamps. In fact, Carolin Bakewell testified that the order of discipline regarding Mr. Locklear did not include any charge of failure to supervise. Petitioners' actions did not amount to the unauthorized practice of law. To the contrary, their actions were pursuant to and in accordance with the rules of the law of the Supreme Court of North Carolina. Thus their answers to question 13 as it pertains to Locklear are immaterial.

IV. It was a violation of the Fourteenth Amendment's Procedural Due Process Clause not to Grant Petitioners' Motion to Sever.

Petitioners urged a motion to sever based on the fact that the witnesses and Office of Disciplinary Counsel had referred to Jerry Jackson Stamps and Teresa Lynn Witt-

Stamps indiscriminately as "The Stamps." There was no apparent effort made to separate them, and to attempt to hold Jerry Jackson Stamps accountable only for his actions and to hold Teresa Lynn Witt-Stamps accountable only for her actions. Many of the "findings of fact" contained in the Hearing Committee's recommendations refer to the Stamps collectively as having done one thing or another during the relevant timeframe.

In the Hearing Committee Recommendations, however, (p. 17) the Hearing Committee appears "convinced" that Teresa Lynn Witt-Stamps engaged in the unauthorized practice of law based upon letters written by Jerry Jackson Stamps. This is an inaccurate characterization of the letters. The letters were not written or purportedly written by Teresa Lynn Witt-Stamps. The evidence does not prove that they were written by Petitioner, Jerry Jackson Stamps. Mr. Stamps was only asked if the number at the top of the page was in fact his fax number. At no time did Jerry Stamps admit writing the letters.

These letters constitute hearsay evidence against Teresa Lynn Witt-Stamps. She was never asked about them. They have never been authenticated and do not bear the name of Teresa Lynn Witt-Stamps. This is an excellent example of why there should have been a severance of parties in this matter. It was entirely inappropriate for the Hearing Committee to consider these letters as evidence against Petitioner, Teresa Lynn Witt-Stamps. Justice Kimball agreed.

Jerry Jackson Stamps is not responsible for the conduct of his wife. Teresa Lynn Witt-Stamps is not responsible for the conduct of her husband. The Motion to Sever should have been granted. Each Respondent has been severely affected by the evidence against the other. The

refusal to sever denies Petitioners due process rights and equal protection laws.

V. Factors In Mitigation Under ABA Standards For Imposing Lawyer Sanctions. Standard 9.3 that should apply in this case, but were not considered thus violating the Fourteenth Amendment and Equal Protection Clauses.

1. Absence of a prior disciplinary record.

As the evidence before the Hearing Committee has shown, the Petitioners have practiced law continuously in the State of Louisiana since their admission to the State Bar with no disciplinary sanctions.

2. Absence of a dishonest or selfish motive.

There were NO dishonest or selfish motives on Petitioners' part. They were simply trying to establish an employment relationship with Locklear which did not materialize.

3. Full and free disclosure to Disciplinary Counsel and cooperative attitude toward proceedings.

Petitioners have cooperated fully with the ODC.

4. Inexperience in the practice of law.

The Respondents were recent law school graduates. They were NOT licensed in any state when the alleged conduct took place. The Respondents' inexperience in the practice of law was very relevant in their dealings with

Locklear in North Carolina and with their beliefs in filing out the bar application.

5. Character and reputation.

Both Petitioners have unblemished and impeccable records. Teresa Lynn Witt-Stamps graduated from Lynchburg College, Magna Cum Laude, with an unblemished record. She graduated from Yale Divinity School with a Masters Degree in Ethics and she did graduate work at Duke University toward a degree in theology before graduating from Temple Law School.

Petitioner, Jerry Jackson Stamps, as the record shows, served four years in the United States Air Force, receiving an Honorable Discharge with an unblemished record. He spent three years at Yale Divinity School receiving a Masters Degree in Ethics, before doing graduate work at Duke Divinity School in the field of Ethics and graduated from Temple Law School.

The Court concluded that Jerry Jackson Stamps and Teresa Lynn Witt-Stamps do not possess good moral character and fitness to practice law. The Court's injection of this finding was first raised in the Court's opinion. Moral character and fitness issues were not raised by the complaint, discussed by the Hearing Committee or by the Board. If the Court was interested in the moral character and fitness of Jerry Jackson Stamps and Teresa Lynn Witt-Stamps, then the Court should have allowed these individuals to present evidence on the issue. There is no clear and convincing evidence to support the Court's conclusion that these Petitioners do not possess the requisite moral character and fitness to practice law.

Further, sanctions should be consistent for similar incidents of misconduct.

In the case of *Louisiana State Bar v. Dutel*, 572 So.2d 503 (La. 1989) the Louisiana Supreme Court issued a public reprimand to William J. Dutel, Attorney at Law, for making a knowingly false statement and/or misrepresenting a material fact in a loan application to a Federal institution for the purpose of influencing that institution to give him a loan after a Federal conviction.

Comparing Dutel's punishment and the facts of that case with the instant case and the punishment of the Court, it seems that the Court's punishment is far too harsh, excessive, is a shock to one's conscience and denies Petitioners equal protection of the law.

We urged the Court to review its decision in *In Re LaNasa*, 93-1823, 625 So.2d 1337 (La. 1993). As we read and review the decision rendered in this case the Court finds an ethical violation of Rule 8.1, that is, that the Petitioners were not truthful in their respectful bar applications. In such an instance the Court has established *In Re LaNasa* as a precedent. We believe, as did the Board, that disbarment recommended by the Hearing Committee is far too harsh a sanction and does not follow the Court's sanction in *In Re LaNasa* or in *Dutel*.

CONCLUSION

Petitioners are being treated differently than other individuals who have been before the Court in attorney disciplinary proceedings. *In re Wilkinson*, 805 So.2d 142, 144, 2001-2310 (La. 1/15/02) involved a complaint filed against Mr. Paul Stewart, a Mississippi law school graduate, who worked as a law clerk in Mr. Wilkinson's law office and had taken the Louisiana bar exam in July 1996, for the mishandling of a succession. The ODC ultimately closed its investigation into the complaint because he was not admitted

to the bar at the time of the misconduct." *Id.* at 144. Stewart, the non-lawyer, was not subject to discipline.

With regard to Petitioners, ODC pursued the matter, knowing that the alleged conduct occurred PRIOR to their becoming licensed attorneys.

As to the false application issue, in each and every authority cited by the Court in its decision, an independent, outside body had made a determination of wrong-doing which the applicant KNEW existed. Then applicant intentionally failed to disclose that fact on his/her bar application. Unlike any other situation here the Court makes its own determination of Petitioners wrongdoing retroactively, and then punishes Petitioners for that action, by disbarment under Rule 8.1.

Protection from arbitrary action is the essence of substantive due process. *Slochower v. Board of Higher Education of City of New York,* 350 U. S. 551, 76 S. Ct. 637, 100 L. Ed. 692, (1956), reh'g denied, 351 U.S. 944, 76 S. Ct. 843, 100 L. Ed. 1470 (1956); *Jack Lincoln Shops v. State Dry Cleaners' Bd.* 192 Okla. 251, 135 P.2d 332 (1943), appeal dismissed, 320 U.S. 208, 63 S. Ct. 1448, 87 L. Ed. 1847 (1943).

A claim that person is entitled to "substantive due process" means that state action which deprives him or her of life, liberty, or property must have a rational basis; the reason for the deprivation may not be so inadequate that the judiciary will characterize it as "arbitrary." *Jeffries v. Turkey Run Consol. School Dist.* 492 F.2d 1 (7th Cir. 1974).

To satisfy the requirements of the Due Process Clause, laws and regulations MUST provide specific standards which avoid arbitrary and discriminatory enforcement. *Griffin v. Vaughn,* 112 F. 3d 703 (3rd Cir. 1997). In other

words, a reasonably prudent person, familiar with the provisions that are meant to be addressed and the objectives that are meant to be regulated and achieved, would have FAIR WARNING of what is required of them. *Freeman United Coal Min. Co. v. Federal Mine Safety and Health Review Com'n,* 108 F.3d 358, 1997, O. S. H. Dec. (CCH) ¶ 31270) D.C. Cir. 1997).

For the reasons set forth herein these proceedings lack the fundamental fairness required by the rules and the Fourteenth Amendment to the U.S. Constitution. This Court is respectfully urged to grant Petitioners' application for a writ. Since publication of this opinion, the Louisiana Office of Disciplinary Counsel, has cited *In re Stamps* as the controlling authority on evidentiary issues in disciplinary proceedings wherein everything is in and nothing is excluded. The current decision in this case will have overwhelming consequences for all attorneys licensed in the State of Louisiana and will serve to render the Rules of Evidence, the Louisiana Rules of Professional Conduct and the recent decisions by the United States Supreme Court meaningless in to disciplinary proceedings in Louisiana.

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LESLIE J. SCHIFF
BAR NO. 11776

CERTIFICATE OF SERVICE

I hereby certify that copies of the above and foregoing Petition for Writ of Certiorari and Appendix have this day been forwarded by United States Mail to Ms. Donna L. Roberts, Board Administrator, Louisiana Attorney Disciplinary Board, 2800 Veterans Memorial Blvd., Suite 310, Metairie, Louisiana 70002 and to Mr. Fred Ours, Deputy Disciplinary Counsel, Office of Disciplinary Counsel, 4000 S. Sherwood Forest Blvd., Suite 607, Baton Rouge, Louisiana, postage prepaid and properly addressed.

Opelousas, Louisiana, this 22 day of September, 2004.

LESLIE J. SCHIFF